

§ 764.6

Room H4514, Washington, DC 20230, Tel: (202) 482-5036, Facsimile: (202) 482-5889.

(d) *Action by the Office of Export Enforcement.* After OEE has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, OEE may take any of the following actions:

(1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 766.18 of the EAR and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached; and/or

(5) Refer the matter to the Department of Justice for criminal prosecution.

(e) *Criteria.* Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

(f) *Treatment of unlawfully exported items after voluntary self-disclosure.* (1) Any person taking certain actions with knowledge that a violation of the EAA or the EAR has occurred has violated § 764.2(e) of this part. Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in § 764.2(e) of this part that would otherwise be prohibited. If the request is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate § 764.2(e) of this part will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed nor relieved of

the obligation to obtain any required reexport authorizations.

(2) A license to reexport items that are the subject of a voluntary self-disclosure, and that have been exported contrary to the provisions of the EAA or the EAR, may be requested from BIS in accordance with the provisions of part 748 of the EAR. If the applicant for reexport authorization knows that the items are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 69 FR 7870, Feb. 20, 2004; 70 FR 22250, Apr. 29, 2005; 78 FR 48605, Aug. 9, 2013]

§ 764.6 Protective administrative measures.

(a) *License Exception limitation.* As provided in § 740.2(b) of the EAR, all License Exceptions are subject to revision, suspension, or revocation.

(b) *Revocation or suspension of licenses.* As provided in § 750.8 of the EAR, all licenses are subject to revision, suspension, or revocation.

(c) *Temporary denial orders.* BIS may, in accordance with § 766.24 of the EAR, issue an order temporarily denying export privileges when such an order is necessary in the public interest to prevent the occurrence of an imminent violation.

(d) *Denial based on criminal conviction.* BIS may, in accordance with § 766.25 of the EAR, issue an order denying the export privileges of any person who has been convicted of an offense specified in § 11(h) of the EAA.

§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.

(a) *Introduction.* As set forth in § 764.2(e) of this part, and restated in General Prohibition Ten at § 736.2(b)(10) of the EAR, no person (including a non-U.S. Third Party) may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, finance, forward, or otherwise service, in whole or in part, any item subject to the EAR with knowledge that a violation has occurred, or will occur, in connection

with the item. This section addresses the application of § 764.2(e) of this part to activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended (April 29, 2004) (“installed base” items).

(b) *Libya*—(1) *Activities involving installed base items in Libya for which no license is required.* Subject to the reporting requirement set forth in paragraph (b)(1)(ii) of this section, activities within the scope of § 764.2(e) of this part involving installed base items described in paragraph (b)(1)(i) of this section that are located in Libya and that were exported or reexported before April 29, 2004 do not require a license from BIS.

(i) *Scope.* An installed base item is within the scope of paragraph (b)(1) of this section if:

(A) It is not on the Commerce Control List in Supplement No.1 to Part 774 of the EAR;

(B) It is on the Commerce Control List, but is authorized for export or re-export pursuant to a License Exception to Libya; or

(C) It is on the Commerce Control List and controlled only for AT reasons or for NS and AT reasons only, and is not listed on the Wassenaar Arrangement’s Sensitive List (Annex 1) or Very Sensitive List (Annex 2) posted on the Wassenaar Arrangement’s Web site (www.wassenaar.org) at the Control Lists web page.

NOTE 1 TO PARAGRAPH (b)(1)(i): An item being exported or reexported to Libya may require a license based on the classification of the item to be exported or reexported regardless of whether the item will be used in connection with an installed base item. See paragraph (b)(4) of this section.

NOTE 2 TO PARAGRAPH (b)(1)(i): Not all items listed on the Wassenaar Arrangement’s Annex 1, Sensitive List, and Annex 2, Very Sensitive List, fall under the export licensing jurisdiction of the Department of Commerce. Please refer to the Commerce Control List for additional jurisdictional information related to those items. Also, if you do not have access to the internet to review the Wassenaar Arrangement’s Sensitive List and Very Sensitive List, please contact the Office of Exporter Services, Division of Exporter Counseling for assistance at telephone number (202) 482-4811.

(ii) *Reporting requirement.* Any person engaging in activity described in paragraph (b)(1) of this section must submit to BIS’s Office of Export Enforcement (OEE) a report including all known material facts with respect to how the installed base item arrived in Libya. The report must be submitted to OEE at the address identified in § 764.4(a) of the EAR within ninety (90) days of the first activity relating to the installed base item in Libya. A report may address more than one activity and/or more than one installed base item. An additional report must be submitted if any new material information regarding the export or reexport to Libya of the installed base item is discovered.

(2) *Licensing procedure for activities involving installed base items in Libya*—(i) *License requirement.* Any person seeking to undertake activities within the scope of § 764.2(e) of the EAR with respect to any installed base item located in Libya and not described in paragraph (b)(1)(i) of this section must obtain a license from BIS prior to engaging in any such activities. License applications should be submitted in accordance with §§ 748.1, 748.4 and 748.6 of the EAR, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application. License applications should include all known material facts as to how the installed base item originally was exported or reexported to Libya. This section also applies if you know that an item to be exported or reexported to a third party will be used on an installed base item not described in paragraph (b)(1)(i) of this section.

(ii) *Licensing policy.* BIS will review license applications submitted pursuant to paragraph (b)(2)(i) of this section on a case-by-case basis. Favorable consideration will be given for those applications related to civil end-uses in Libya. Applications related to military, police, intelligence, or other sensitive end-uses in Libya will be subject to a general policy of denial.

(3) *Exclusion.* The provisions of this section are not applicable to any activities within the scope of § 764.2(e) of the EAR undertaken with respect to an

installed base item in Libya by a person who was party to the original illegal export or reexport of the related installed base item to Libya. Such persons should voluntarily self-disclose violations pursuant to the procedures set forth in § 764.5 of this part, which in some cases may allow activities related to unlawfully exported or reexported items to be undertaken based on permission from BIS.

(4) *Relationship to other Libya license requirements.* Notwithstanding this section, a license may be required pursuant to another provision of the EAR to engage in activity involving Libya. If a license is required pursuant to another section of the EAR, and the transaction also involves activity within the scope of § 764.2(e) of this part related to an installed base item in Libya, this information should be specified on the license application. Such applications must also include all known information as to how the installed base item originally arrived in Libya. If granted, the license for the proposed transaction will also authorize the related activity within the scope of § 764.2(e) of this part.

[70 FR 14391, Mar. 22, 2005, as amended at 71 FR 51719, Aug. 31, 2006; 73 FR 49331, Aug. 21, 2008]

§ 764.8 Voluntary self-disclosures for boycott violations.

This section sets forth procedures for disclosing violations of part 760 of the EAR—Restrictive Trade Practices or Boycotts and violations of part 762—Recordkeeping—with respect to records related to part 760. In this section, these provisions are referred to collectively as the “antiboycott provisions.” This section also describes BIS’s policy regarding such disclosures.

(a) *General policy.* BIS strongly encourages disclosure to the Office of Antiboycott Compliance (OAC) if you believe that you may have violated the antiboycott provisions. Voluntary self-disclosures are a mitigating factor with respect to any enforcement action that OAC might take.

(b) *Limitations.* (1) This section does not apply to disclosures of violations relating to provisions of the EAR other than the antiboycott provisions. Section 764.5 of this part describes how to

prepare disclosures of violations of the EAR other than the antiboycott provisions.

(2) The provisions of this section apply only when information is provided to OAC for its review in determining whether to take administrative action under parts 764 and 766 of the EAR for violations of the antiboycott provisions.

(3) *Timing.* The provisions of this section apply only if OAC receives the voluntary self-disclosure as described in paragraph (c)(2) of this section before it commences an investigation or inquiry in connection with the same or substantially similar information it received from another source.

(i) *Mandatory Reports.* For purposes of this section, OAC’s receipt of a report required to be filed under § 760.5 of the EAR that discloses that a person took an action prohibited by part 760 of the EAR constitutes the receipt of information from another source.

(ii) *Requests for Advice.* For purposes of this section, a violation that is revealed to OAC by a person who is seeking advice, either by telephone or e-mail, about the antiboycott provisions does not constitute the receipt of information from another source. Such revelation also does not constitute a voluntary self-disclosure or initial notification of a voluntary self-disclosure for purposes of this section.

(4) Although a voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by BIS, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of BIS, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, BIS would notify the Department of Justice of the voluntary self-disclosure, but the decision as to how to consider that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section